

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DISTRICT COURT
S.D. OF GA.

2011 NOV 30 AM 9:39

CLERK C. Roberson
SO. DIST. OF GA.

MICHAEL D. MARLIN,

Petitioner,

v.

ANTHONY HAYNES, Warden,

Respondent.

CIVIL ACTION NO.: CV211-143

ORDER

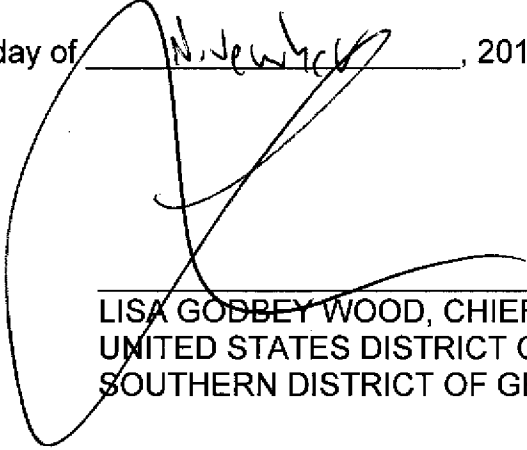
Petitioner Michael Marlin ("Marlin") filed an Objection to the Magistrate Judge's Report dated November 7, 2011, which recommended that Marlin's 28 U.S.C. § 2241 petition be dismissed. In his Objection, Marlin argues that he is not required to exhaust all available administrative remedies because the Prison Litigation Reform Act ("PLRA") does not apply to habeas corpus petitions. Marlin further argues that to dismiss his case based on failure to exhaust would result in a fundamental miscarriage of justice.

After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation. As discussed in Skinner v. Wiley, 355 F.3d 1293, 1295 (11th Cir. 2004), and in the Magistrate Judge's Report, "despite the PLRA's inapplicability to habeas petitions . . . prisoners seeking habeas relief, including relief pursuant to § 2241, are subject to administrative exhaustion requirements." As the Magistrate Judge discussed, Marlin did not exhaust his

administrative remedies prior to filing the instant petition and an attempt to exhaust his remedies would not have been futile. (Doc. No. 22, p. 3-4). Since the Court of Appeals for the Eleventh Circuit has determined that exhaustion is required for habeas petitions, a fundamental miscarriage of justice will not result if Marlin's case is dismissed.

As a result, Marlin's Objection to the Magistrate Judge's Report and Recommendation is without merit and is **overruled**. The Report and Recommendation of the Magistrate Judge is adopted as the Opinion of the Court. Marlin's 28 U.S.C. § 2241 petition is **DISMISSED**, without prejudice. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 29 day of November, 2011.



LISA GOBBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA